

Application No. 09/604,525
Amendment Dated November 8, 2005
Attorney Docket No. 10722-31970

Remarks

Claims 16-159 are pending in this application. Certain amendments from the Amendment Under 37 C.F.R. § 1.116 (Post Appeal Brief) and Record of Interview, filed October 29, 2004 ("Rule 116 Amendment") are re-presented for entry, and certain other amendments have also been made (e.g. deletion of the word "cash" as necessarily modifying "payment" in the independent claims).

This case was previously the subject of an appeal, with an appeal brief having been filed on July 6, 2004. Subsequent to that appeal brief, the Rule 116 Amendment was filed, in response to a telephone conference with Examiner Richard C. Fults. In that discussion, the examiner suggested inclusion of certain aspects or features of the invention believed to distinguish over the art, namely, and in no particular order and with one having no more or less significance than another, and noting that all aspects are not required in all claims, the provision of a money transfer system operative as recited in the various claims, the payment locations associated with the money transfer system and having payment location local computers, the assigning of a unique transaction number to a payment request, the determination of an amount payable in the local currency of the buyer (for certain claims), and a payment being physically made at a payment location associated with the money transfer system (and not with the buyer).

Applicants were therefore expecting a Notice of Allowance. However, apparently a new examiner (David Vincent) was assigned to this case, for reasons that are not indicated in the record, and apparently prosecution has been reopened.

It is not clear from Office Action from Mr. Vincent whether the Rule 116 Amendment was entered or not. The examiner made reference to the brief filed July 9, 2004, but did not make reference to the Rule 116 Amendment. Accordingly, the amendments from the Rule 116 Amendment are presented again for entry during this reopened prosecution.

Claim Rejections – 35 USC § 103

Claims 16-26, 28-39, 41-52, 54-65, 67-76, 78-89, 91-100, 102-113, 115-123, 125-136, and 138-158 were rejected under 35 USC 103(a) as being unpatentable over *Conklin* U.S.

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Patent No. 6,141,653), in view of the Business Wire article (09889724 from Dialog file 148)("eBay Teams with Parcel Plus, Tradesafe and iEscrow ...").

The examiner asserted that *Conklin* discloses an online commerce system including a buyer and a seller, a money transfer system connected with one or more payment location local computers, effecting a cash payment from a buyer to a seller, receiving an electronic payment request from a seller computer in response to a proposed transaction between the buyer and the seller, the payment request comprising at least a transaction amount, assigning a unique transaction number to the payment request, etc. Various excerpts from the *Conklin* patent were referenced as showing various aspects from the claims.

This rejection is not understood, improper, and therefore is traversed. Most succinctly stated, the examiner's characterizations of the teachings of *Conklin* are a disconnected series of quotations from the *Conklin* patent that bear no relevance to the claimed subject matter. The examiner has not provided an adequate reasoning of why a skilled artisan would have been led to modify *Conklin* or combine other prior art teachings to arrive at the claimed inventions. As will be shown, most of the examiner's citations to the *Conklin* patent are immaterial and inapplicable as leading one skilled in the art to a system and methods as claimed.

Features and aspects of the present invention that are believed novel and patentable have been previously summarized in the Appellant's Brief filed July 6, 2004, at pages 2-4. As the examiner presumably has already seen this summary, it is not believed necessary to repeat this summary. All of the independent claims (16, 42, 68, 92, 116, and 138) are included in the claims identified in this ground of rejection (16-26, 28-39, 41-52, 54-65, 67-76, 78-89, 91-100, 102-113, 115-123, 125-136, and 138-158).

It is noted, however, that the various independent claims include somewhat different aspects, e.g. independent claim 16 and its associated dependent claims are directed, among other things, to aspects of a method for effecting a payment from a buyer to a seller in connection with an electronic transaction utilizing a money transfer system, with method steps particularly applicable to the money transfer system. Likewise, claim 42 and its associated dependent claims are directed, among other things, to aspects of a system for effecting a payment from a buyer to a

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seller in connection with an electronic transaction utilizing a money transfer system, with operations particularly applicable to the money transfer system.

Claim 68 and its associated dependent claims are directed, among other things, to aspects of a method for effecting a payment from a buyer to a seller in connection with an electronic transaction utilizing a money transfer system, including steps relating to determination of the payment amount in the buyer local currency, with method steps particularly applicable to the money transfer system. Claim 92 and its associated dependent claims are directed, among other things, to aspects of a system for effecting a payment from a buyer to a seller in connection with an electronic transaction utilizing a money transfer system, including operations relating to determination of the payment amount in the buyer local currency, with operations of the system particularly applicable to the money transfer system.

Claim 116 and its associated dependent claims are directed, among other things, to aspects of a method for effecting a payment from a buyer to a seller in connection with an electronic transaction, with method steps recited for various payment system components in addition to the money transfer system, and including steps relating to determination of the payment amount in the buyer local currency and storing the transaction information in a staging area for later retrieval. Claim 138 and its associated dependent claims are directed, among other things, to aspects of a system for effecting a payment from a buyer to a seller in connection with an electronic transaction, reciting various payment system components in addition to the money transfer system, and also including operations relating to determination of the payment amount in the buyer local currency and storing the transaction information in a staging area for later retrieval.

Applicable Standard of Review

As recently stated by the Board of Patent Appeals and Interferences in *Ex parte Portnoy and Srys*, Appeal No. 2004-1461 (admittedly not for publication but informative as to the law nonetheless), in rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to

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make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 48 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *Note In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Id.*; *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

For at least three reasons, the *Conklin* patent does not disclose, teach or suggest the inventive aspects of the present invention, as set forth in the claims as they have now been amended, and there is no reason in *Conklin* or in any other reference why one skilled in the art would be led to modify *Conklin* or combine *Conklin* with other reference's teachings to arrive at the inventions expressed in the claims as they now stand, as amended. First, *Conklin* does not show or suggest a "money transfer system," as the terms are used and intended in the claims. Second, *Conklin* does not show or suggest any "payment locations" or "payment location local computers," as the terms are used and intended in the claims. Third, because the *Conklin* patent does not include these elements or anything similar thereto, *Conklin* does not disclose, teach or suggest anything remotely similar to the claimed functionality of communicating a message to a seller computer that payment has actually been made at a payment location, based on

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information from a payment location local computer to the money transfer system, so that a transaction may be completed by making payment from the money transfer system to the seller. These features or aspects, which appear for the most part in all the independent claims in one form or another, are not shown, taught, or suggested in any reference, nor is there a reference that could reasonably be combined with *Conklin* to supply the missing teachings.

The *Conklin* patent describes a system for iterative, multivariate negotiations over a network (*Conklin*, Title and Abstract). It is not a payment system, it is a negotiation system. While there are buyers, and sellers, and arrangements for negotiated terms, there is no provision for actual payment to be made at a designated "payment location," with the resultant elements and steps for enabling a buyer to make actual payment at a payment location of the money transfer system.

The portions of *Conklin* cited by the examiner as showing various claimed features of the claims are not germane to the claimed subject matter, and result from a strained and awkward interpretation, at best, and incorrect at points. It is thus submitted that the rejection is incorrect and/or improper and should be withdrawn.

1. Conklin Does Not Relate to a Money Transfer System

First, *Conklin* does not show a "money transfer system," as the term is used and intended in the claims. On page 2 of the Office Action, the examiner asserted that *Conklin* discloses a "money transfer system (Figs.) [sic] connected with one or more payment locations having payment location local computers (col. 31, lines 9-36; Figs. 1), effecting a cash payment from a buyer to a seller (Fig. 2c; wire transfers, col. 6, lines 51-65; col. 25, lines 55-59; cash is a relative term and means different things to different people, col. 27, line 14-25)." The cited portions of *Conklin* simply do not support the examiner's position. Since a negotiation system bears few if any similarities to a payment system, it is far-fetched to think that a skilled artisan would be led to modify *Conklin* to arrive at a payment system involving actual payments made at payment locations associated with the money transfer system.

And further, what did the examiner mean by citing the indefinite "(Figs.)" as showing a money transfer system? It makes no sense, and is improper to cite all the "Figs." of a reference

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as showing something – especially without identifying which “Figs.” and how they might show a money transfer system.

As mentioned above, the *Conklin* patent describes a system for iterative, multivariate negotiations over a network. It is a negotiation system (the “front end” of many transactions), and does not provide any relevant teachings about the “tail end” of a transaction, namely the payment portion. A careful reading of *Conklin* reveals that the payment aspects of a transaction are naturally a part of a negotiated transaction and that sellers can provide various payment choices for customers (see Fig. 10-3), but there is no teaching of a money transfer system that could be used as a payment mechanism. Payment options, especially by credit card, are viewed as “complicated” (col. 4, lines 51–60 through col. 5, line 34); credit cards for paying cash in advance are discussed (col. 6, lines 16–21). Wire transfers for bank-to-bank payment (col. 6, lines 51–65; FIG. 30) are discussed. And letters of credit are discussed throughout the patent (col. 6, line 66 through col. 7, line 20; Fig. 11a-1' through Fig. 11a-3, Fig. 13; Fig. 15 C- and C-2). But none of these upfront negotiated payment-related aspects of a transaction relate at all to how a payment is actually made and completed!

Those skilled in the art will read *Conklin* as teaching that payment is necessarily one of the terms of a transaction that can be negotiated up front of a transaction, but lacking any teaching of how to effect payment. It certainly does not teach a “money transfer system,” as the term is used in the claims of the present application.

2. Conklin Does Not Disclose or Teach Payment Locations or Payment Location Local Computers

Second, *Conklin* does not show or suggest any “payment locations” or “payment location local computers,” as the terms are used and intended in the claims. The examiner cited *Conklin* col. 31, lines 9–36 and Fig. 1 as disclosing one or more payment locations having payment location local computers. (Office Action, page 2, last paragraph). This excerpt is completely unrelated to payment locations associated with a money transfer system, where a person might go and make an actual payment. Col. 31, lines 9–36 is a strange citation – it begins with the last sentence of a paragraph in the patent and extends into the middle of a paragraph. It is thus a

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disconnected and nonsensical citation. More importantly, the cited section merely speaks of a seller accepting buyer terms BT2 and reflecting them in final deal terms FD. The discussion goes on to speak of non-repudiation of a transaction and excuse of performance; it is completely unrelated to how a person makes a payment.

What does this have to do with payment locations? Or a money transfer system? Absolutely nothing. Again, *Conklin* relates to negotiation, not effecting actual payment in the manner of the claims. The remainder of the citation relates to "Sample Ordering." What does ordering of sample products have to do with money transfer system or payment locations or payment location local computers? Answer: Nothing again.

The citation to Fig. 2c, and wire transfers in col. 6, lines 51-65, and col. 25, lines 55-59, as showing effecting a cash payment is similarly irrelevant. Fig. 2c of *Conklin* is a very general "prior art" block diagram showing a product catalog, a fax machine, a telephone, samples, a bank, a factory, and a generic "payment." The "payment" in Fig. 2c is described in the patent in connection with letters of credit being negotiated by telephone calls and facsimile exchanges (see col. 7, lines 8-12). This discussion has nothing to do with a money transfer system or making a payment at a payment location affiliated with the money transfer system. It is talking about letters of credit! Payments at a payment location, let alone cash payments, are not even remotely hinted at.

The citation to col. 6, lines 51-65 of *Conklin* (Office Action, top of page 3) is similarly irrelevant. This excerpt relates to wire transfers for bank-to-bank payments on international transactions, done over private bank networks and usually between companies which have already establish a purchasing relationship. This is not a money transfer system, or any form of payment made at a payment location.

The citation to col. 25, lines 55-59 is likewise irrelevant. This excerpt relates to purchase orders of bulk order items being negotiated and letters of credit. For the examiner to rely upon this clearly irrelevant and unrelated discussion about "bulk order" and "letters of credit" as showing a money transfer system, or making payments at a payment location associated with the money transfer system, is completely improper.

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As an aside, the examiner stated that "cash is a relative term and means different things to different people," citing to *Conklin* col. 27, lines 14-25. (Office Action, page 3, at the top.) It is noted at this juncture that the term "cash" has been deleted from the independent claims as unduly limiting; certain dependent claims qualify the payments as including a cash payment as one form (see e.g. dependent claims 23 and 32).

Regardless of whether the payment is "cash" or not, the cited portions of *Conklin* do not support the examiner's assertion about payment locations or payment location local computers. The cited excerpt (col. 25, lines 55-59) merely describes negotiation of a letter of credit. No person skilled in the art would equate negotiation of a letter of credit with actually making a payment at a payment location. It is plain and clear from the specification of the applicant's patent application that the important aspect is not the nature of the payment – whether cash or other form of payment – but rather is the receipt of "an actual payment for the transaction at one of a plurality of payment locations accessible to the buyer." (See Application, page 8, lines 9–10). "The actual payment is preferably a cash payment, although payment could also be in the form of a check, money order, credit card, or the like." (Id., lines 10–12). "Upon receiving the payment from the buyer at one of the payment locations, the seller is notified over the Internet that the actual payment for the transaction was received at a payment location, and the seller can then ship the purchased items to the buyer." (Id., lines 13–16).

How the examiner can take the position that wire transfers between banks (which does not meet the claim) or negotiation of letters of credit (which also does not meet the claim) discloses or teaches making a payment at a payment location is not understood, and is not reasonable. As a whole, therefore, one skilled in the art would not be led by teachings relating to letters of credit or wire transfers to modify the *Conklin* patent (or combine other prior art teachings) to arrive at an invention involving actual payments made at payment locations associated with a money transfer system.

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3. Conklin Does Not Disclose or Teach Communicating a Message that Payment Has Actually Been Made

Third, the *Conklin* patent does not disclose, teach or suggest anything remotely similar to the claimed functionality of communicating a message to a seller computer that payment has actually been made at a payment location, based on information from a payment location local computer to the money transfer system, so that a transaction may be completed by making payment from the money transfer system to the seller. (See for example claim 16, as amended.)

Here is yet another instance of where the examiner's citation to *Conklin* does not meet any of the claims. On page 4 of the Office Action, the examiner presumably cited *Conklin* as disclosing this element, as follows: "in response to receipt of information from a payment location that payment in the amount of the grand total amount has been received as the payment location (Fig. 11a-2), communicating a message to the seller computer that payment has been actually made at a payment location (Figs. 7-8)."

The cited excerpts do not support the assertion at all. Fig. 11a-2 of *Conklin* merely illustrates terms of a letter of credit. (See col. 16, lines 30-31: "Fig. 11a-1 through 11a-3 show a completed letter of credit negotiated using the present invention.") There is no other mention of "Fig. 11a-2" in the *Conklin* patent. Figs. 7-8 of *Conklin* are merely flow diagrams illustrating a buyer entering negotiations and illustrative reporting features, respectively. Where, in either Fig. 11a-2 or in Fig. 7 or 8, is there anything at all about receipt of information that actual payment has been received? Or at a payment location? Or a grand total amount? Or communicating a message to the seller that such payment has actually been made? It is simply not a supportable conclusion. The examiner's reliance on these portions of *Conklin* is misplaced and improper.

It is submitted that the foregoing is completely responsive to the rejection of claims 16-26, 28-39, 41-52, 54-65, 67-76, 78-89, 91-100, 102-113, 115-123, 125-136, and 138-158 under 35 USC 103(a) as being unpatentable over *Conklin* in view of the Business Wire article. It should be clear from the foregoing that the *Conklin* patent simply cannot support an obviousness rejection of these claims, either singularly or in combination with the Business Wire article, or any other reference of record, because of its clear lack of any teachings relevant to aspects of an

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online commerce system that includes a money transfer system, connected for electronic communications with one or more payment locations, which are configured to receive actual payments at a payment location associated with the money transfer system, with a message communicated to a seller computer that payment has actually been made, all as more particularly recited in the independent claims in this case, as amended. The skilled artisan would simply not be motivated to modify *Conklin* to include the aspects as claimed, because of *Conklin*'s singular focus on the negotiations aspect of a transaction, not on the payment aspects.

There are further instances of citations and excerpts from *Conklin* that are not germane and irrelevant, or are cumulative to the points already made, e.g. the discussion on page 3 of the Office Action relating to receiving an electronic payment request, assigning a unique transaction number, determining a grand total amount, communicating information to the seller computer system for displaying the grand total amount and the unique transaction number to the buyer computer system, etc. It is submitted that none of these other citations to *Conklin* provide the missing teachings or motivation to modify *Conklin*, and it is not believed necessary to dissect each of these citations and point out the lack of relevance to the claims, as amended. The same observation applies to the remaining citations on pages 4 through 10 of the Office Action, wherein the examiner sets out a collection of citations to *Conklin* that are not believed germane to the principal arguments as set forth above. It is therefore not believed necessary to address each and every one of these citations and excerpts.

Without waiving any rights that applicants may have, it is submitted that these other citations and excerpt are similarly incorrect, irrelevant, and improper, and do not support the examiner's asserted positions as disclosing, teaching, or suggesting the aspects of the claims that the examiner has identified. In this regard, applicants expressly reserve the right to address these other cumulative issues, should the same become necessary, or on appeal.

Conklin and Business Wire Article

With respect to claims 39, 65, 89, 113, 136, and 158, the examiner stated on page 11 of the Office Action that *Conklin* fails to particularly call for wherein the seller is a seller on an online auction system, and cited the Business Wire article as teaching that the seller is a seller in

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an online auction system, and also unique transaction number(s) being assigned to payment requests (citing pg. 2 or the 9th paragraph).

It appears that the examiner is referring to the 10th full paragraph of the Business Wire article after the header, "How i-Escrow's Escrow Service Works," which reads, in relevant part in the third sentence, "i-Escrow assigns a transaction identification number and a seller password after the seller submits the completed form. After i-Escrow notifies the buyer of the transaction via email, the buyer logs in to obtain a buyer password. The buyer then transfers funds to the escrow account. Once i-Escrow verifies the funds, the seller is instructed to ship the goods to the buyer."

The cited excerpt from the Business Wire article is describing a completely different and unrelated payment system – an escrow payment system. The fact that the system is an online auction system (the now well-known eBay system) is immaterial to the claims in this application. Merely because this article indicates that a transaction number is assigned to a transaction does not make it obvious to include the transaction number feature in a totally different type of payment system, one involving an actual payment made at a payment location, with notification that the payment has been made to the seller (not the buyer, who only transfers funds to an escrow account). The sequence in this system is very different – in the eBay/Business Wire system, there is a payment escrow arrangement; in certain claims of this application (e.g. claim 16, for example), there is a payment request arrangement, wherein the amount of the transaction is communicated to the seller computer system and the unique transaction number to the buyer computer system, followed by communicating to the seller that payment has actually been made at a payment location.

This is not the same as an escrow arrangement at all – which may or may not involve an actual payment to fund the escrow. Those skilled in the art will appreciate the difference and the value of providing a system for receiving an actual payment, where the buyer makes such an actual payment that is verified "on the spot" and then communicated to the seller. Accordingly, the examiner's reliance on the Business Wire article is improper and incorrect, because its isolated and out-of-context teaching of a transaction number does not supply any missing teachings or render the claim obvious.

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For the foregoing reasons, it is respectfully submitted that the rejection under 35 USC § 103 based on *Conklin*, taken singularly or in combination with the Business Wire article, is improper and should be withdrawn.

Claim Rejections – 35 USC § 103

Claims 27, 40, 53, 66, 77, 90, 101, 114, 124, and 137 were rejected under 35 USC § 103(a) as being unpatentable over *Conklin* and the Business Wire article, further in view of the Godwin article (Travel Weekly). The examiner indicated that *Conklin* fails to particularly call for storing the data record in a payment confirmation queue in response to receipt of the information from the payment location that payment has actually been made at the payment location (referencing claims 27, 53, 77, 101, and 124), and maintaining device queue records comprising lists of messages awaiting delivery, etc. (referencing claims 40, 66, 90, 114, 137, and 159). The Godwin article was cited as teaching using queues for payments.

The examiner's reliance on the Godwin reference for the isolated, unconnected teaching of queues is misplaced and out of context, and therefore traversed. First, it is noted that all of the claims rejected on this ground are dependent claims. In this regard, the examiner cited *Conklin* as disclosing proposed orders "pending" (*Conklin*, col. 20, lines 57–61), accessing stored records (*Conklin*, Fig. 8), and using email (*Conklin*, Fig. 7), and concluded it would have been obvious to use a memory labeled as a buffer or a queue for helping when there is network traffic and a source cannot send the messages at the present time, especially since *Conklin* uses emails (citing *Conklin*, Figs. 11 or 18–23), which have queues.

It is submitted that there is no motivation to modify *Conklin* to utilize queues, in a money transfer system to arrive at the claimed inventions of these dependent claims, because of the clear lack of relevance of *Conklin*'s negotiation system to teaching the need for message queuing in a money transfer system. As discussed in great detail above, the *Conklin* patent relates to multivariate negotiations, which form the front end of the transaction system described in that patent. Payment is, while not an afterthought, merely one of the many terms that a seller can specify – but *Conklin* does not teach how to effect the payment. Since *Conklin* does not teach anything about the payments, being made at a payment location, or actual

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payment, there are no messages relating to payments that need to be sent to a seller regarding such payments. *Conklin* is simply silent about messages relating to payments. It goes without saying, then, that *Conklin* is silent about messages relating to actual payments made a payment location, so that a transaction can be completed as specified in the claims.

Accordingly, a person skilled in the art would not be led by the Godwin article to utilize message queuing, as used in the various claims, to modify *Conklin* to include queuing, because there is simply no aspect of *Conklin* that relates to messages regarding payments in a money transfer system, or payment confirmation queues, or data records corresponding to payment request, or the other aspects of these dependent claims. It is thus requested that the rejection be withdrawn.

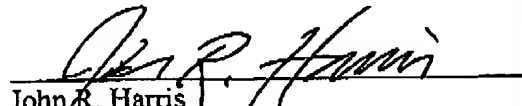
Conclusion

For the foregoing reasons, all claims are believed novel and nonobvious, and therefore patentable. It is requested that the claims be allowed without further delay. The foregoing is submitted as a full and complete response to the Office Action mailed July 8, 2005, and is believed to have placed all claims in condition for allowance. Credit Card Payment Form PTO-2038 in the amount of \$120 is enclosed to cover the fee for a one-month extension of time. No further fees are believed due. If the Examiner believes that there are any other issues that can be resolved by a telephone, or that there are any informalities that can be corrected by an Examiner's amendment, please call the undersigned at 404 504 7720.

Respectfully submitted,

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